

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS ON CERTAIN PROPERTIES OWNED BY THE CITY OF NORTH LITTLE ROCK LOCATED SOUTH AND EAST OF THE PIKE AVENUE ROUNDABOUT; AND FOR OTHER PURPOSES.

WHEREAS, on January 25, 2016, Resolution No. 8929 was adopted by the North Little Rock City Council authorizing the purchase of certain spur track property (consisting of approximately 41,351 square feet, or 0.949 acres) located between Bishop Lindsey Avenue (a/k/a East 7th St.) and East 4th Street in the downtown corridor from the Union Pacific Railroad Company (“Union Pacific”) for approximately \$425,000.00; and

WHEREAS, the City of North Little Rock (“the City”) owns certain parcels of property located southwest of the roundabout connecting Pike Avenue, Rockwater Boulevard and Riverfront Drive (see map attached hereto as Exhibit “A”); and

WHEREAS, negotiation of terms for the spur track property sale include a Union Pacific contingency to include execution by the City of a Declaration of Restrictive Covenants on properties identified on Exhibit “A” to primarily include the following:

- Restrict excavation or disturbance of soil below a 15 foot depth without prior notification to the Arkansas Department of Environmental Quality (“ADEQ”);
- Groundwater shall not be used for any purpose, and no contact with groundwater shall be permitted without prior notification to ADEQ;
- Any buildings or occupied structures constructed or installed on the property will be constructed with a vapor barrier;
- Allow installation by Union Pacific of a sentry well system on the property at an agreed upon location; and

WHEREAS, the City continues to believe that the spur track property can be resold for development thereby improving the downtown area and promoting economic growth, thus benefitting the City and its citizens; and

WHEREAS, the City desires to expeditiously move forward with the purchase of the spur track property, and the sale contingency placing restrictive covenants on the roundabout properties will ensure acquisition of the spur track property as well as the proper and safe development (minimizing remediation of potential contamination) thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Declaration of Restrictive Covenant (substantially similar to Exhibit “B” attached hereto) prohibiting groundwater use, requiring vapor barrier for any structures constructed thereon,

restricting excavation and allowing installation of a sentry well system, said properties located southwest of the roundabout connecting Pike Avenue, Rockwater Boulevard and Riverfront Drive (see map attached hereto as Exhibit "A"), and being described as follows:

Parcel No. 33N-273.00-166.00

Lots 1-3, Block 14, Giles Addition to the City of North Little Rock, Pulaski County, Arkansas.

Parcel No. 33N-273.00-167.00

Lots 4-6, Block 14, Giles Addition to the City of North Little Rock, Pulaski County, Arkansas.

Parcel No. 33N-273.00-175.00

Lots 1-8, Block 15, Giles Addition to the City of North Little Rock, Pulaski County, Arkansas.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A. Smith
Mayor Joe A. Smith *m-bm*

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter
C. Jason Carter, City Attorney *m-bm*

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	<u>11:08</u>	A.M.	_____	P.M.
By	<u>Dep. City Atty Marie-B Miller</u>			
DATE	<u>September 20, 2016</u>			
Diane Whitbey, City Clerk & Collector North Little Rock, Arkansas				
RECEIVED BY	<u>L Bragg</u>			

EXHIBIT

"A"

tabbles



300 Feet

150

75

0

Date: 9/12/2016



EXHIBIT B

DECLARATION OF RESTRICTIVE COVENANTS

- A. The Declarant, City of North Little Rock, owns title to the properties located in the vicinity of Pike Avenue, located in North Little Rock, Pulaski County, Arkansas, further described by the Pulaski County Tax Assessor as Parcel Numbers 33N-268.00-023.00, 33N-268.00-024.00, 33N-273.00-135.00, , 33N-273.00-166.00, 33N-273.00-167.00, and 33N-273.00-175.00, such real property being legally described as Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- B. As of the date hereof, Declarant has not developed this property and no buildings or structures are currently present.
- C. Diesel fuel from a former Union Pacific Railroad (UPRR) fueling facility and gasoline from an unrelated source leaked into the subsurface soil and shallow groundwater and impacted approximately a portion of the Property as shown on Figure 1 in Exhibit B.
- D. In order to prevent potential human contact with the impacted soil, soil vapor, and groundwater in the area identified on Figure 1, Declarant desires to impose upon and subject the Property to this Declaration, which shall become effective upon the recording of the Declaration in the land records of Pulaski County, Arkansas.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares that the Property and any portion thereof is and shall be held, transferred, sold, conveyed, used and occupied subject to the perpetual restrictive covenants hereinafter set forth, which restrictive covenants shall run with the Property and be binding upon all parties having any right, title, or interest in the Property or any part thereof, their successors and assigns, and shall inure to the benefit of each owner thereof, and which are for the purpose of protecting the value and desirability of the Property.

1. Restricted Uses. Notwithstanding any laws, rules, regulations, ordinances, or orders of any governmental or quasi-governmental entity, including, without limitation, local municipal and zoning ordinances, the following restrictions will apply to the soils and groundwater within the identified Property, or any portion thereof:

- a. Due to the presence of light non-aqueous petroleum liquids (LNAPL), soil below a depth of 15 feet below the ground surface may not be excavated or disturbed without prior notification to the Arkansas Department of Environmental Quality (ADEQ).
- b. Groundwater shall not be used for any purpose, and no contact with groundwater shall be permitted without prior notification to ADEQ.

c. Any buildings or occupied structures constructed or installed on the property will be constructed with a vapor barrier so as to prevent soil and/or groundwater vapors from entering the structure.

d. A sentry well system shall be installed to monitor groundwater between the LNAPL plume and the Arkansas River.

2. Runs with the Land. The perpetual restrictive covenants created in this Declaration are appurtenant to the Property and are (i) made for the direct benefit of the Property; (ii) shall run with the land; (iii) may be enforced as either equitable servitudes or real covenants, and (iv) shall bind and inure to the benefit of every person or entity having any property interest in the Property of any portion thereof.

3. Severability. If any portion of this Declaration shall to any extent be invalid or unenforceable, the remaining provisions of this Declaration shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

4. Successors and Assigns Bound. This Declaration shall be perpetual and shall be binding upon Declarant's successors, assigns, and lessees or his or her authorized agents, employees or persons acting under his or her direction or control. The restrictions shall apply until ADEQ determines that the said restrictions are no longer required.

5. Removal of Restriction. In the event that ADEQ or its successor provides Declarant or its successor in ownership of said property with a written determination that this deed restriction is no longer necessary to protect the public health or the environment, the then-current owner of record of the property may file such documents with the Pulaski County, Arkansas Recorder of Deeds as are necessary to remove the restrictions contained in this Declaration from the Property.

6. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Arkansas.

(Signature contained on following page)

_____ day of _____, 2016.

Owner of Property

By: _____

Name: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2016, before me personally appeared _____, to me, who being by me duly sworn did say that he/she is the owner of the Property described above.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the
County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

.....